

HB 279

RESOLUTION 2008 - 35

STATEWIDE COST ALLOCATION PLAN

It is the intent of the Montana Association of Counties to seek legislation to exempt "earmarked" federal funds that flow through state agencies from any Statewide Cost Allocation Plan.

WHEREAS, some federal "earmarked" funds are required to be distributed through a state agency; and

WHEREAS, Section 17-1-104 MCA defines indirect costs and Section 17-5-105 MCA requires the Department of Administration to annually calculate the rate of the allocation of indirect costs (currently 14.9%); and

WHEREAS, Section 17-1-106 MCA requires state agencies to recover this indirect cost; and

WHEREAS, counties often receive federal earmarked funds, particularly for county bridge and highway construction projects; and,

WHEREAS, many projects are funded from a combination of sources and the amount that is withheld as an indirect cost can jeopardize the entire project; and,

WHEREAS, it often falls to the county to find a means to make up this shortfall when it was the county's efforts that secured the earmarked funds that are being reduced; and,

NOW, THEREFORE, BE IT RESOLVED, that the Montana Association of Counties seek legislation to exempt federal earmarked funds from the state cost allocation plan.

SPONSOR: Districts 10 & 11

RECOMMENDATION: Do Pass

PRIORITY: High

REFERRED TO: Transportation Committee
Economic Development Committee
MT Assoc. of Co. Road Supervisors

ADOPTED: Annual Conference, Hamilton, MT September 24, 2008

2009 Montana Legislature

[Additional Bill Links](#) [PDF \(with line numbers\)](#)

HOUSE BILL NO. 279

INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF TRANSPORTATION FROM RECOVERING INDIRECT COSTS FOR CERTAIN PROGRAMS FINANCED BY FEDERAL FUNDS THROUGH THE DEPARTMENT; AND AMENDING SECTION 17-1-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-1-106, MCA, is amended to read:

"17-1-106. Agency recovery of indirect costs -- exemptions. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the following programs financed by federal funds:

~~—(a) community transportation enhancement program;~~

~~—(b) congestion mitigation and air quality improvement program; or~~

~~—(c) surface transportation program-urban.~~

(3)(4) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or

guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4)(5) Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

(5)(6) Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid."

- END -

STATEWIDE COST ALLOCATION PLAN AS IT EXISTED IN 2001

(Sections Renumbered in 2005)

17-3-110. Statewide cost allocation plan. The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

17-3-111. Indirect cost rates -- allocation. (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund.

CURRENT LAW

17-1-105. Statewide cost allocation plan. (1) The director of the department shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the agencies, in accordance with principles and procedures established by applicable regulations and guidelines.

(2) An agency required to pay costs under the statewide cost allocation plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.

History: En. 79-1021 by Sec. 2, Ch. 223, L. 1975; R.C.M. 1947, 79-1021; amd. Sec. 1, Ch. 579, L. 1983; amd. Sec. 2, Ch. 121, L. 2005; Sec. 17-3-110, MCA 2003; redes. 17-1-105 by Sec. 5, Ch. 121, L. 2005. Compiler's Comments:

2005 Amendment: Chapter 121 in (1) near beginning after "department" deleted "of administration", near middle after "among the" deleted "grantee", and near end after "established by" substituted "applicable" for "federal"; inserted (2) requiring payments in four equal installments by depositing the payments into the general fund; and made minor changes in style. Amendment effective July 1, 2005.

17-1-106. Agency recovery of indirect costs. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

(5) Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid.

History: En. 79-1022 by Sec. 3, Ch. 223, L. 1975; R.C.M. 1947, 79-1022; amd. Sec. 1, Ch. 37, Sp. L. November 1993; amd. Sec. 1, Ch. 14, Sp. L. August 2002; amd. Sec. 3, Ch. 121, L. 2005; Sec. 17-3-111, MCA 2003; reds. 17-1-106 by Sec. 5, Ch. 121, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 121 in (1) at beginning substituted "An agency receiving nongeneral funds" for "Grantee agencies", after "accordance with" substituted "all applicable regulations, guidelines, or grant rules governing those funds" for "federal regulations and guidelines and with private grant rules, as appropriate", and near end after "methodologies" substituted "so that the agency may recover indirect costs" for "and recover indirect costs of federal assistance programs and private assistance programs"; in (4) inserted first sentence requiring submission of an indirect cost proposal to the appropriate federal agency and at end of second sentence after "build" substituted "an indirect cost proposal" for "indirect costs into a grant"; in (5) at beginning of first sentence inserted exception clause, after "recovered" substituted "by an agency to pay the agency's indirect costs under 17-1-105" for "from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system", and at end substituted "as provided in 17-1-105" for "in the general fund" and in second sentence after first "costs" deleted "except those costs recovered by a unit of the university system"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendment: Chapter 14 in (1) after "guidelines" inserted "and with private grant rules, as appropriate", after "indirect cost" substituted "reimbursement amounts and methodologies and" for "rates and endeavor, to the fullest extent possible, to", and at end inserted "and private assistance programs"; inserted (2) concerning written approval for accepting certain funds; inserted (3) concerning prohibition on waiving or forfeiting indirect cost recovery and establishing hierarchy for claiming costs; inserted (4) concerning technical assistance on building indirect costs into a grant; in (5) inserted last sentence concerning deposit of indirect costs; and made minor changes in style. Amendment effective August 16, 2002.

1993 Special Session Amendment: Chapter 37 inserted (2) requiring deposit of recovered indirect costs, except those recovered by the University System, in the general fund. Amendment effective January 5, 1994.

2002 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 21

INTRODUCED BY J. BALLYEAT



AN ACT MAXIMIZING GENERAL FUND REVENUE BY ENHANCING COLLECTION OF STATE REIMBURSEMENT FOR INDIRECT COSTS ASSOCIATED WITH FEDERAL OR PRIVATE CONTRACTS AND GRANTS; REQUIRING FULL RECOVERY OF INDIRECT COSTS FROM FEDERAL AND PRIVATE GRANTS; PROVIDING THAT AN AGENCY MAY NOT WAIVE REIMBURSEMENT FOR INDIRECT COSTS; PROVIDING AN EXCEPTION FOR UNITS OF THE UNIVERSITY SYSTEM AND INTRAAGENCY OR INTERAGENCY GRANTS AND CONTRACTS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO PROVIDE ASSISTANCE TO AGENCIES; AMENDING SECTION 17-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-3-111, MCA, is amended to read:

"17-3-111. Indirect cost rates -- allocation. (1) Grantee agencies shall, in accordance with federal regulations and guidelines and with private grant rules, as appropriate, negotiate indirect cost rates and endeavor, to the fullest extent possible, to reimbursement amounts and methodologies and recover indirect costs of federal assistance programs and private assistance programs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intraagency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or

administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) The department shall provide technical assistance to an agency on how to build indirect costs into a grant.

(2)(5) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund. All other indirect costs, except those costs recovered by a unit of the university system, must be deposited in the fund from which the indirect costs were originally paid."

Section 2. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of HB 21 (HB0021.ENR)

Processed for the Web on August 10, 2002 (2:22PM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2002 Legislature | Leg. Branch Home

This bill in WP 5.1 | All versions of all bills in WP 5.1

Authorized print version w/line numbers (PDF format)

Prepared by Montana Legislative Services

(406) 444-3064

FISCAL NOTE

Bill #: HB0021

Title: Require full recovery of indirect
Costs from federal and third-party grants

**Primary
Sponsor:** Joe Balyeat

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY 2003 Difference</u>	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Expenditures:	0	0	0
Revenue:			
General Fund – SWCAP	1,507,326	1,001,125	589,830
Net Impact on General Fund Balance:	1,507,326	1,001,125	589,830

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. Agencies that receive federal funds will recover the use of centralized services paid by the general fund through the Statewide Cost Allocation Plan (SWCAP). Non-federal/non general funded divisions will recover these costs through the State Funds Cost Allocation Plan (SFCAP).
2. State Fund Cost Allocation Plan assessments have historically been paid in full. Statewide Cost Allocation Plan contributions have been approximately \$500,000 per fiscal year for the last three years.

FISCAL IMPACT:

	<u>FY 2003</u> <u>Difference</u>	<u>FY 2004</u> <u>Difference</u>	<u>FY 2005</u> <u>Difference</u>
<u>Revenues:</u>			
General Fund (01)	1,507,326	1,001,125	589,830
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>			
General Fund (01)	1,507,326	1,001,125	589,830

TECHNICAL NOTES:

Suggest adding a provision that state agencies can not charge indirect costs on grants from other state agencies, perhaps an "except ..." phrase on page 1, line 23, following program. This will prevent programs like Growth Through Agriculture being charged for its \$600K of grants to other agencies and the Wheat and Barley Commission being charged for its grants to the MUS.

OFFICE OF MANAGEMENT AND BUDGET**2 CFR Part 225****Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)**

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A-87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3052 (direct) or 202-395-3993 (main office) and e-mail: Hai_M._Tran@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106-107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A-87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A-87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB

Circular A-87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A-87)**Sec.**

225.5 Purpose.

225.10 Authority

225.15 Background

225.20 Policy.

225.25 Definitions.

225.30 OMB responsibilities.

225.35 Federal agency responsibilities.

225.40 Effective date of changes.

225.45 Relationship to previous issuance.

225.50 Policy review date.

225.55 Information Contact.

Appendix A to Part 225—General Principles for Determining Allowable Costs

Appendix B to Part 225—Selected Items of Cost

Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans

Appendix D to Part 225—Public Assistance Cost Allocation Plans

Appendix E to Part 225—State and Local Indirect Cost Rate Proposals

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

§ 225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§ 225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

§ 225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106-107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied "Selected Items of Cost" in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§ 225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§ 225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§ 225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§ 225.40 Effective date of changes.

This part is effective August 31, 2005.

§ 225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular